IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1811 OF 1994

Mohammed Hussain Merchant ... Plaintiff

Vs.

Smt. Suhasini Vithoba Navalkar & Ors. Defendants.

Mr. S.Jain i/b. Ranjit & Co. for the Plaintiff.

Ms. Sunita Tiwari with Ramson Dias for defendants Nos. 2, 6 & 7.

CORAM: S.K.SHAH,J.

DATE : 6th December, 2006.

P.C.

1. The learned Counsel appearing for the defendants Nos.2, 6 and 7 seeks an adjournment on the ground that the defendants have filed an Appeal against the order passed in the earlier Notice of Motion whereby the Notice of Motion for taking the Written Statement of the defendants came to be rejected. This application is opposed by the learned Counsel for the plaintiff on the ground that sufficient time was granted since 4.10.2006. However, the defendants have not taken steps. On the last occasion, the defendants were granted time to obtain necessary orders permitting them to file written

statement on payment of costs. However, no orders have been passed. Under the circumstances, the prayer for adjournment is rejected.

2. This is an undefended suit against the defendants Nos.2, 3, 6 and 7. The original defendants Nos. 1, 4 and 5 have expired and other defendants are the representatives of the defendants on record and they are undefended. They have not filed any written statement.

3. The suit is for declaration that the suit agreement for sale dated 20th April, 1988 is valid, subsisting and binding on the defendants and for specific performance of the said agreement. In support of his case, the plaintiff has filed affidavit of evidence as also compilation of documents. This consists of suit agreement for sale, the power of attorney dated 26.4.1986 executed by the defendants in favour of the plaintiff and the letter dated 25.4.1994 frkom the plaintiff’s Advocate to the Defednants calling upon them to perform their part of the suit agreement.

4. Perusal of these documents would show that by the suit agreement dated 20.4.1986 the defendants have agreed to sell the suit property for the consideration of Rs.18,00,000/-. The plaintiff has paid a sum of Rs.1,00,000/- as earnest money. The suit agreement is duly executed by all the defendants in favour of the

plaintiff. The plaintiff has also produced a copy of the letter dated 21.7.1988 received from the Income-tax Authorities - certificate under Section 269 UL (3) of the I.T.Act, 1961. The plaintiff has also produced a copy of the letter dated 25.4.1994 which was given by the plaintiff to the defendants calling upon them to perform their part of the contract, inter alia, stating therein that they were ready and willing to pay the balance consideration of Rs.17,00,000/-. The plaintiff has also stated that the defendants have failed and neglected to perform their part of the agreement.

5. In view of this, the Suit is decreed in terms of prayer clauses (a), (b) and (g). Decree be drawn accordingly.

6. The Plaintiff shall deposit the balance consideration of Rs.17,00,000/- in Court within one week from today. This amount of balance consideration if deposited by the plaintiff shall be paid to the defendants on the defendants executed conveyance in favour of the plaintiff.

7. The interim relief of injunction gtranted in favour of the plaintiff as against the defendants shall continue till the conveyance is executed.

(S.K.SHAH,J.)